

SHEPAUG RIVER ASSOCIATION

**P.O. Box 279
2 Green Hill Road
Washington Depot, CT 06794
Tel: 860 868 9131**

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January 29, 2010

**Paul E. Stacey
Director
Bureau of Water Protection & Land Reuse
Planning & Standards Division
Department of Environmental Protection
79 Elm Street
Hartford, CT 06106-5127**

**Re: Proposed Stream Flow Regulations in response to Public Act
05-142**

Dear Mr. Stacey:

On behalf of the Shepaug River Association, I am pleased to submit our comments on the Department's proposed stream flow regulations in response to Public Act 05-142.

This Association is a Connecticut not-for-profit corporation formed in the early 1990's with as its purpose to promote the protection, restoration and rational use of the Shepaug River following years of excessive diversions of water from the river by the Waterbury Water Company. The Association, and its efforts to save the Shepaug River, included all with a direct interest in the river: the Towns of Washington and Roxbury, the Roxbury Land Trust, Steep Rock Association, through whose land the river runs, as well as thousands of citizen supporters.

From its formation the Association led the river advocates in the unsuccessful negotiations with the City of Waterbury in the 1990's, the litigation against the City beginning in 1997 through 2005 and the reaching of an agreement with the City in 2005 to provide minimal stream flow to the Shepaug River. In order to preserve the river, the Association raised

approximately \$2 million and presumably the City had to spend a nearly equal amount in the litigation. As you know, the State of Connecticut had to grant over \$3 million to the City to pay for modifications to the Shepaug Dam and the Wigwam Reservoir pumping system in order to permit the City to comply with the settlement agreement which is now in effect.

Had stream flow regulations such as now proposed by your department been in effect, the above delay, expense and damage to the river from inadequate flows would have been avoided.

In our attempts to negotiate an agreement with the City to preserve the river, the present antiquated stream flow regulations were of no help. They are incomprehensively complex and provide for inadequate flows to sustain the life of our rivers. The testimony in court of your Department's biologists and water experts was that there was no scientific basis for the present stream flow regulations. Whether the present stream flow regulations apply to a river at all depends on whether the Department has made the decision, and has had the funds, to stock a river with fish. Moreover, despite an expressed willingness of your Department and the Attorney General to assist in a settlement of the dispute over the Shepaug, under the existing regulations they were powerless to convince the City to reach an agreement to preserve the river even though flows were adequate both to preserve the river and meet Waterbury's needs for water.

As has been apparent to the legislature in mandating the adoption of new stream flow regulations for our state, the Shepaug dispute demonstrates that the present regulatory framework is wholly inadequate to preserve our rivers.

Without a new comprehensive regime for minimum stream flows which are scientifically based, further divisive and wasteful litigation will be necessary among stake holders whenever flows are inadequate. The results of such disputes are unpredictable and cannot be counted on to develop a body of scientifically based, coherent and fair regime of water law in our state. And in the mean time, given the huge effort required to protect a river through the courts, we can count on river systems increasingly to suffer from excessive diversions or extractions.

We have reviewed the Department's proposed regulations revised as of May 11, 2009. We would have preferred a regulatory regime that places

a higher value on the protection of our river systems in their natural state and less on their exploitation. For example, the regulations do not require your Department in the future to take measures to enable the reclassification of stream segments to a more natural and less altered category, e.g. from Class 3 to Class 2. We are also concerned that stream segments that are classified as class 4 will be left to die.

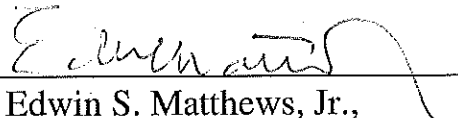
Notwithstanding our reservations, we feel that the Department's draft reflects a fair compromise between preservation and their exploitation by human activity. It also provides a regulatory framework for future balancing of the human and natural needs for stream flows. We therefore urge their adoption in their present form.

Should the regulations be modified substantively from the form proposed, we reserve the right to comment further.

We wish to thank your Department and those who have worked to prepare these regulations for their hard work and for their attention to providing our state with a rational and fair regulatory framework to preserve our rivers along with satisfying legitimate human needs.

Respectfully yours,

SHEPAUG RIVER ASSOCIATION

By 
Edwin S. Matthews, Jr.,
President